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ABSTRACT

This report (1) describes how the project disseminated information about student rights through a student rights handbook, a student rights news service, and speaking engagements; (2) outlines the nature of project services that help students obtain their rights; (3) describes procedures for enforcement of student rights; (4) discusses school rights as they were affected by selected areas of school administration; and (5) describes legal and administrative actions the project has pursued in redressing wrongs of particular students. (JF)

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NYCLU

STUDENT RIGHTS PROJECT
report on the first two years
1970–1972

EA 004 832

New York Civil Liberties Union, 84 Fifth Avenue, New York, N.Y. 10011. Telephone 924-7800

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NEW YORK CIVIL LIBERTIES UNION

STUDENT RIGHTS PROJECT
REPORT

Ira Glasser, Executive Director Alan Levine, Project Director

Sept. [redacted], 1972

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I. The First Two Years--An Overview

In retrospect, it can be doubted that the New York City Board of Education ever had any substantial commitment to student rights. Perhaps that was to have been expected. It has been said that government is always at war with the liberties of its people, and the Board is no different. For a public official to vigorously protect individual liberty while he fulfills his governmental responsibility requires a far-sightedness and largeness of vision no more attributable to the members of the Board than to most other government functionaires. Their duties often militate against such vision.

Predictably, when schools are beset by disturbances, the rights of an accused instigator to due process hardly loom large. When the public wants action on the problems of drugs in the schools, neither the public nor the Board is concerned about the loss of individual privacy occasioned by the use of police informers or compulsory urinalysis tests. When the

legislature charges the Board with fiscal irresponsbility, when the community school boards threaten to spend more money than they are allocated, when the professional staff revolts against headquarters policy, the right of a student to pass out a leaflet is not a priority item on the Board's agenda. Regrettably, our experience these past months has been that it isn't on the Board's agenda at all.

None of this should have been a surprise, but it was because the Board started out with great promise by codifying important procedural and political rights for students. The issuance of its regulations on school suspensions and its Statement on Rights and Responsibilities turned out, with minor exceptions, to mark the high point as well as the end of its committment to student rights. Having established the "liberal" policies on due process and First Amendment rights for students, the Board seemed to act as if the problem of student rights had been solved, as if the pronouncement of policies was sufficient. Long and specific indictments of principals who blatantly disregarded the Board's policies and by-laws did not seem to interest them.

Our formal complaints and appeals were never even answered, much less acted upon. "I don't care what the law is; I'm the one who runs this school" became a frequent refrain of some principals, and the Board did nothing about it. A lengthy report was submitted to the Board showing that principals violated the suspension regulations in almost every case studied. The Board never even commented upon it.

The Board's attitude toward student rights ranged from active opposition to militant unconcern. The Board even had to be taken to federal court to force principals to permit students to distribute the Student Rights Handbook describing the Board's own policies.

The Board not only permitted its employees to ignore Board policies. The Board itself ignored them. The Board set up a procedure for students to appeal decisions to suspend them from school. The rules required a decision by the Board within five days of an appeal being filed. The Project

filed several appeals. Months later, the Board had not rendered a decision on any of these appeals or even acknowledged that the appeals had been filed.

It has become painfully clear that with all the other demands upon the Board's time and energy, and with the persistent pressure exerted by the professional unions, the first interest to be sacrificed is student rights. This also is not very surprising. The behavior of the Board of Education is often largely determined by the resolution of forces exerted by different organized interests. Of the four interest groups directly involved in the schools -- supervisors, teachers, parents and students -- students are the least organized. Every other interest group benefits from the efforts of large organizations that exert power. Even the general public -- through organizations like the Public Education Association -- is represented. Only students are organizationally powerless.

The consequences of student powerlessness are not hard to predict. Until teachers organized a trade union, their rights were consistently abused, and existed only at the sufferance of their bosses. Given this degree of student powerlessness, the presence of NYCLU's Student Rights Project has been crucial. The knowledge that NYCLU stands ready to publicize and litigate in behalf of student rights is known throughout the school system. It has for the first time created in some parents and students -- particularly those who are not white -- the feeling that the school's arbitrary actions are reversible, and that it is possible to resist the school's efforts to push children in trouble out of the schools and into the streets. It has angered some Board members who have actively cultivated a libertarian image but who would not act to enforce students' liberties. More hopefully, it has begun to have a perceptible effect on some lower and middle level administrative staff who actually make many of the day-to-day decisions on student complaints.

At the very least, NYCLU's Student Rights Project has apparently begun to redress the one-sided balance of power which has traditionally resulted in students' rights being subordinated to those of every other organized group in the school system.

Finally, a word about the Chancellor. He came to the school system with a proven compassion for students and an articulate perception of how schools could stultify, control, manipulate and diminish children. We began, therefore, with unprecedented hope that at last student rights might have a responsive ear at the Board. And on occasion that hope has been realized. But to some extent, Dr. Scribner has been disappointing. His best decisions on student rights are either unknown to the students or ignored by the principals. Time after time, he has been given examples of school administrators who flout Board policy, who break the law and who deal with students arbitrarily. Yet Dr. Scribner has not been able to achieve com-

pliance from his employees with the Board's own laws.

In fairness to him, there is strong evidence that this tolerance for official lawlessness is the Board's, and not Dr. Scribner's, policy, and that it reflects the Board's unwillingness to antagonize the professional unions and the very powerful High School Principals Association. And some principals here made it clear that if no sanctions attend their arbitrary and unlawful actions, they will continue to act arbitrarily and unlawfully. As a result, the impact of this imaginative and forward-looking educator upon student rights has been disappointing.

The failure of the Board to take action against principals who violate the law contrasts sharply with the school system's record of swift action against student misconduct. The effect on students of this double standard has been disastrous. Cynicism, disbelief in the rule of law and a sense that the schools are a massive spectacle of hypocrisy are

widespread among students. Students cannot be taught in their classes about John Peter Zenger and freedom of the press while their own leaflets and newspapers are censored. They cannot be taught about James Madison and freedom of speech while they are prevented from distributing a Handbook that describes their rights. They cannot be taught about due process and the presumption of innocence while they are subject to arbitrary and unfair procedures. Above all, they cannot be taught about the rule of law while they themselves are ruled by officials who seem to be above the law.

We believe that the single largest crisis facing the schools today is the disaffection and distrust of its students. We believe that this disaffection and distrust is directly traceable to the refusal of school officials to respect the rights of students and establish the rule of law. No matter how successful Dr. Scribner's other programs and innovations may be, his hopes for the

schools will not amount to much if he cannot recover the faith and trust of his own students.

II. The Student Rights Project and its Purposes

The Student Rights Project of the New York Civil Liberties Union was begun in January 1970 to represent students and their parents in the public schools who found their rights abridged by public school officials. The time was right for a concentrated attempt to make the public schools, the controlling institutions in the lives of most young people, accountable to the standards of justice and fairness that students in those schools are taught are the basis of our democracy. A minority of students had recently begun to demand of the schools the constitutional freedom available to citizens in the larger community. A much larger number of politically unaware students in the city's massive school system were finding themselves the pawns of a bureaucracy which had grown too large and callous to provide the right for an adequate education for many of its young people. Both kinds of students have been the clients

of the project in the past year and a half.

The project is directed by Alan H. Levine, an attorney, who before directing the Project was NYCLU staff counsel for four years and staff counsel for the Lawyers Constitutional Defense Committee in Mississippi before that. The staff includes Steven M. Twilberg, also an attorney; Diane Divoky, a part time education writer-researcher; and Leo Summer, a full time volunteer who heads the service and field operation. In addition to staff and volunteers at the Project office, the Project calls on trained lay advocates working out of community projects in the various boroughs to help with cases at the local school level. In handling cases in school districts throughout the state, the Project works closely with NYCLU chapters and local cooperating attorneys, and also with ACLU affiliates around the country.

The Project was launched in New York City against a backdrop of official policy towards student rights which had as many versions as there

were schools in the system. Students were punished -- or threatened -- in one school for an officially disapproved newspaper article, in another for hair fashionably long, in another for distributing an underground newspaper, in another for not wearing the proper gym uniform. To note that students in other schools were not similarly punished was not to say that in those schools students had "rights." Rather it was to confirm that throughout the school system students were permitted to do only that which the principal allowed them to do. The notion that students had rights -- that they could act in ways which the law permitted but the principal disapproved -- was non-existent.

This began to change at the beginning of the school year 1969-70 when the Board of Education, under strong pressure from NYCLU and other civic groups, as well as a citywide coalition of high school students enacted provisions affording students certain procedural rights when suspended. Substantive rights, pertaining to personal appearance,

free expression, and participation in school governance, were outlined in a Statement on Rights and Responsibilities promulgated at the end of the school year. Together these documents constituted a major codification of student rights. But codification proved to be only a first step. For these newly promulgated rights to actually affect students' lives, three things had to happen first:

1) People had to know that students had rights;
2) Students had to be sufficiently unintimidated to exercise them; and
3) Somebody had to help enforce the rights.

The Project's major purpose was this three-fold undertaking.

III. Information -- Telling People that Students had Rights and What Those Rights Were

Extensive experience during the academic year 1969-70 with the suspension regulations gave ample evidence that Board of Education policy on student rights was no match for those many principals who "knew what was best" for their students. In practice, suspension procedures bore little resemblance to those enacted into law by the Board, a fact extensively documented in the Project's Report on Suspension Procedures issued in February 1971. What the Report demonstrated was that the Board had made no effort to advise students of the suspension regulations or to insure that school officials abided by them. As a result, their impact had been negligible.

A. The Student Rights Handbook. The Student Rights Handbook published by NYCLU in October, 1970, told students that they had certain rights and that they could not lawfully be punished for exercising them. It told them to call the Project if they had problems.

If getting the word out that students had rights was the Project's aim, the Handbook was an instant success. Almost 200,000 copies have been distributed and a second edition is being printed. The Handbook has been described in 37 publications, and on a number of radio and television programs. The publicity also included substantial articles in Saturday Review, and New York magazines, news stories in all the major city daily newspapers, and articles in every major educational publication, student underground newspaper, and legal newsletter. Glamour Magazine referred to the Handbook; the rightwing "Let Freedom Ring" radio program did an entire broadcast on it. And high school student editors either reprinted whole sections of the Handbook, or clipped a copy to their publications.

Most of the 200,000 Handbooks were given to students free of charge. Copies were ordered in bulk by the New York City Fire Department, the largest school district in Manitoba, Canada, an order of nuns in California, the American Arbitration Association, as well as by New York City social

agencies, community organizations, Board of Education departments, community school districts, and student groups. A number were ordered for use in an Urban League leadership program in Little Rock, Arkansas. Seven hundred were distributed to the participants in an NYU Law School conference on the Rights of Minors. Handbooks were distributed by students in large quantities at 55 of New York City's 93 high schools and in smaller quantities at almost all of the others. In two high schools, and a number of junior high schools, teachers distributed the handbooks in English classes or homerooms, or through the guidance department. Teachers of college urban affairs courses have requested them for use in their classes. Questions about how to obtain rights discussed in the Handbook have come from a student council president in Japan, an elderly woman in a pay phone booth in Enterprise, Alabama, a white girl in a segregated private academy in Mississippi, and a six-year old who wanted to know if he too had these rights.

The Handbook is referred to as "the model for the country" by John Saunders, an Office of Education official who specializes in student problems. It has in fact been the prototype for similar publications put out by the OEO-funded Center for Student Citizenship, Rights and Responsibilities in Dayton, Ohio, and the New Jersey Department of Education. The Suffolk County Human Rights Commission used the Handbook as a model for a version which became the center of a widely publicized political controversy. Chapter of NYCLU in Nassau, Westchester and Rockland counties, as well as the Yonkers Board of Education, have published, or are about to publish, similar handbooks for students in those areas. In testimony before a committee of the United States Congress, subsequently published on the Op-Ed page of The New York Times, a New York City high school student referred to the Handbook as the authoritative source on students' legal rights.

B. The Student Rights News Service. During the school year several new rulings concerning

students rights were made by school officials. They dealt with such issues as censorship of official and un-official publications, the requirement that student government candidates' speeches be approved in advance, and the policy of discharging students for truancy. Despite repeated requests, the Board of Education steadfastly refused to publicize the decisions. As a result, the Project continued to receive complaints about the same problems from students and their parents who, even if they knew about the new rulings, could not get their principals to abide by them. This fall the Project undertook to fill the information gap by establishing a Student Rights News Service which would send out regular releases about new developments relating to students rights. The releases have gone to student editors and student government leaders with the suggestion that they publish them in school newspapers and post them on student bulletin boards.

C. Speaking Engagements. There is, at best,

widespread ignorance about the subject of students rights. That few teachers or administrators know even of the Tinker case, the landmark U.S. Supreme Court decision in the student rights area in the past decade, is an indication of the status of student rights in the schools. A school board counsel on Long Island, well versed in school law that affects construction, teachers' unions, and insurance, can be completely ignorant of any federal or state decisions concerning the rights of students. Perhaps more significantly, most parents see their children's defiance of school administrators as a threat to educational and vocational opportunities. It is a fact not lost on school principals when it comes time to deal with their defiant charges.

In the hope of creating some better understanding of students rights, members of the Project staff filled 53 speaking engagements during the last school year. Their audiences included the full faculty of a number of high schools and junior high schools, the entire administrative and pedagogical

staff of an upstate school district, a seminar of New York City junior high school principals, t association of all the New York City high school assistant principals, the New York State Association of School Attorneys, parent associations, a college class for guidance counselors and another for urban affairs students, teacher trainees, first-year teachers, community lawyers, the National Council of Teachers of English, pregnant school-age girls, students, faculty advisors, student affairs co-ordinators, ghetto mothers, black community leaders, and church groups. Members of the Project staff also testified before the New York City Board of Education and the state legislature's Fleischman Commission and have traveled to Atlanta, Georgia, Dayton, Ohio, Amherst, Massachusetts, and throughout New York State to speak on student rights. A videotape of one speech of a staff member is being circulated by City University of New York's teacher training arm for wide use with New York City teachers and guidance counselors, and one staff member spoke

at a city high school's commencement exercises.

D. The Project as an Information Resource.

Students rights issues are emerging in schools everywhere. The Project has become established as a place where students, parents, and their lawyers can find out what to do and how to do it. Students from as far away as Colorado call for help in drafting a student code. A lawyer from Iowa writes for help in his attempt to expunge a record. A teacher wants to know if he must compel his students to salute the flag. And the clerk to a Texas federal judge writes for information in connection with a major student rights ruling.

Some information is not always east to get because the school system denies requests or simply ignores them. In such cases, the Project has had to first pry information loose from some unknown Board of Education employee. General school statistics on attendance rates, suspensions, dropouts, transfers, graduates, and incidents of violence would seem to be data that should be easily available to parents,

other concerned citizens, and certainly agencies and organizations that deal specifically with the schools. However, the New York City school system has no clear regulations giving citizens the right to information. The work of obtaining what is obviously public information from the various departments of the New York City Board of Education is tedious and painful. The Project spent six months in communications with high level bureaucrats in five divisions (including time sitting outside their offices) in an attempt to obtain a general summary of suspensions -- clearly a public document and one that had been in the files of a number of school officials for months. Only a formal appeal to the Chancellor, and his subsequent order to his subordinates, finally enabled the Project to obtain the statistics. In a system which sees itself as above public scrutiny, each attempt to gain basic data is a new struggle through myriad channels. The Project was successful in obtaining several sets of statistics which enabled

the public to better understand the state of the schools and their problems.

At the same time, the Project worked to find city and state regulations and "circulars" which were needed to oppose irregular and illegal practices. For example, a state law made it clear that students could not be arbitrarily discharged from their schools at the age of seventeen for being "overage", a regular practice in many high schools. A Bureau of Child Guidance regulation insisted that a hearing must accompany a medical suspension, although this requirement was regularly overlooked. The head of the Bureau of Attendance explained in writing that truancy was never a reason for discharge, although hundreds of students are discharged for truancy. In a number of cases, the uncovering of a regulation which protected students from arbitrary or unfair treatment meant the beginning of a campaign to end unjust practices in the schools.

IV. A Place to Call When Students Are Denied Their Rights

More students are exercising their rights now because the Project exists. That means the schools are more free, less arbitrary, less preoccupied with control. This is so only in part because the Project has won some significant legal cases which have broadened the scope of students' rights. Of greater significance is the fact that students came to know that the Project was there if needed -- that there was a place to call when the exercise of their rights provoked threats of suspension, adverse college recommendations, punitive transfer or other punishments.

A. Day-to-Day Services. Over 400 requests for assistance have been handled by the Project staff. Many of them involved suspension, discharges and other exclusions from school carried out in violation of state law or Board of Education regulations.

Frequently, we had to resort to formal hearings or court action. But much of what was achieved

required nothing more than meeting with students and telling them what their rights were. One group of black students went back to school and ultimately won the right to choose a community leader to address their school club when advised that the law favored them. Another student was able to stay in school and graduate when the Project told him that the notice he had received (at the beginning of his final year) that he was being discharged because he was over 17 was illegal.

The Project became the place to call when there was nowhere else to turn. It was where a probation officer called for help after trying unsuccessfully to get a student reinstated to school. It was the only place for a student to call to find out if it was legal when a teacher in the school cafeteria became angry at another student and made him do 50 deep-knee bends in front of all his classmates. It was where a Puerto Rican high school drop-out came when he wanted to re-enter school and two schools refused

to admit him. It was where a large group of students came to ask the Project to observe a demonstration against an unpopular dean so that we could prevent any unlawful suspensions or arrests. And, it was where a boy would bring this letter from the principal, addressed to his parents:

> "You may not be aware that during the past two weeks your son has been distributing literature in support of the Chicago Conspiracy and other racial causes on the street adjacent to Long Island City High School. His presence has been noted by the police authorities and they will be communicated to other governmental agencies."

That the Project is reaching those most seriously victimized by the school system has been evidenced most dramatically by the gradual change in the clientele coming for aid over the past year. When the project began, a majority of students asking the NYCLU for help in school rights were middle class activist students with primarily first amendment or personal appearance concerns. Although this had begun to change as a result of NYCLU's representation

in federal court of 670 Franklin K. Lane High School students (mostly black and Puerto Rican) who had been illegally ousted from school in early 1969, the basically white, middle-class nature of those who complained to NYCLU still dominated our caseload as the Project began. The wide distribution of the Handbook, the contact with grass roots community groups, and the widespread realization that the Project staff would provide real services has meant that more than 75 per cent of all complaints coming into the Project during the past year have been from minority group students and parents who have received shabby treatment at the hands of the school bureaucracy.

Unlike the kind of problems brought to NYCLU by white middle-class students, involving primarily suspensions for distribution of underground newspapers or violation of school dress codes, the problems brought by nonwhite ghetto students reflect the school system's attempt to get rid of those students who present difficult problems the schools are not prepared to meet, or who do not fit the mold in which the schools operate. To a

large extent, the establishment of due process standards blocks the schools from banishing such students, and the project's efforts in this area have been to aid students and parents in their attempts to resist the schools' efforts to get rid of them. In a very real sense, the project has revealed that what for years has been characterized as a drop-out problem is in fact a push-out problem. The phenomenon was described in a New York Times article (August 28, 1971) which depicted the attempts of integrated southern schools to dispose of their recently enrolled black students. It is apparent that the practice is not restricted to the South. What shocked the city in 1969 in the Franklin K. Lane case has emerged as a systematic pattern throughout the city.

B. Training other to help students. For two reasons the project actively sought to enlist the involvement of community groups in the fight for student rights. First, the volume of complaints coming was overwhelming. Simply to provide assistance for the 14,000 students who were suspended last year would require hundreds of people. Second, and more important, under the new decentralization

law, communities were becoming increasingly involved in overseeing their schools. The complaints coming to the Project provided excellent insight into the functioning of the school system and a good opportunity for community representatives to meet school officials and become involved in school programs. Many community groups were already active in the schools. Project attorneys have held seventeen training sessions throughout the city to prepare lawyers, community leaders, parents and social service workers to serve as advocates for students in suspension and other disciplinary hearings and to handle school-related grievances. This was supplemented by regular mailings containing new developments in student rights. The result was that the majority of calls received by the Project could be referred with confidence to groups in the student's own community.

v. Enforcement. The rights promulgated by the Board of Education, and those established by judicial and administrative decisions, were won over the passionate opposition of school administrators. It was, therefore, to be expected that much of the Project's work would be

involved in forcing resistant school officials to recognize those rights which had already been won. As it turned out, both of the Board's major student rights pronouncements, the suspension regulations and the Statement on Rights and Responsibilities, were widely resisted by school principals.

The suspension regulations were the subject of a report issued in February, 1971. The report covered the first year following their promulgation and carefully analyzed over 100 cases to see if the new regulations were making suspension procedures more fair. The report concluded that they were not. In fact, the Project was unable to find a single one of the suspensions studied where the Board's regulations had been fully observed.

Commenting on the report, a New York Times editorial observed:

> "The study by the New York Civil Liberties Union of 115 instances in which pupils were suspended last year from their schools adds up to a serious indictment of the system's disciplinary practices. Students' rights in many cases appear to have been given short shrift. The fact that in one year the staggering total of 14,000 suspensions took place raises questions why this form of punishment was so exclusively used.

> Causes for suspension, as cited by the study, range from the ridiculous to the outrageous. To suspend a student for irregular attendance seems like prescribing liquor for an alcoholic.... In many cases, principals are charged with having exceeded their authority to suspend as defined by the system's own directives. City educators, who are rightly alarmed by a growing trend of student lawlessness and contempt for authority, should be particularly alert to the damage done to respect for law and justice by official example."
> New York Times, February 20, 1971

The Board's Statement on Rights and Responsibilities fared no better in the hands of school principals. Although students now had a clearly established right to hand out literature on school property, distribution of the NYCLU's Student Rights Handbook, which advised students of that right, was itself prohibited at many high schools. Among the reasons given for the prohibition was that it was obscene, apparently for its use of a single four-letter word in a quotation from a federal court opinion (which had upheld use of the word in a student publication). Some principals also complained that the Handbook contained inaccuracies and was confusing. One said that it incited students to exercise their rights.

The Project wrote to the Chancellor protesting the prohibition and never received an answer. A lawsuit followed which has been resolved by a Stipulation authorizing distribution of the Handbook, obliging the Board of Education to take appropriate disciplinary action against any school officials interfering with students' rights and to publicly post the provisions of the Stipulation in all schools which had barred the Handbook.

The importance of the Stipulation with the Board was that it provided for two important means of enforcement. The public posting meant that principals in those schools could not continue to keep students uninformed about their rights, and the threat of disciplinary action gave principals warning that they were no longer free to proclaim: "I don't care what the law is, I run this school."

The experience with these two major Board policies confirmed our earlier suspicion that the battle for student rights only began with the announcement of those policies. Given a Board which had agreed to the policies only reluctantly and was willing to do little more to make them a reality, and given a network of school officials

who had never agreed to them, even reluctantly, and were willing to do a great deal to prevent them from becoming a reality, a major part of the Project's work became enforcement of rights which purportedly students already enjoyed.

One-third of the way through the 1971-72 school year, enforcement is still the chief obstacle to student rights. The same problems continue to recur, and complaints and appeals still go unanswered by the Board. Now the Project is preparing lawsuits which will seek to compel the Board to enforce its own policies.

VI. Watching the Schools

Many areas of student rights were ripe for litigation, and the Project's work in these areas are described in the Docket below.

Other areas were not subject to litigation. In these the Project played more of a watchdog role, making its presence known and insuring that the rights of students were not sacrificed in the attempt to solve other problems.

A. School Records.

Used correctly, the maintenance of personal and educational records about a child is an important way for the school system to learn of a child's abilities and needs and to individualize instruction as he progresses from class to class. Used incorrectly, they can have a pernicious and far-reaching impact on a student's ability to succeed in school, get into college and even get a job. As the Jamaica High School Guide warns incoming freshmen: "Long after you have been graduated inquiries concerning your record are answered by consulting your record card. This is truly a permanent one. Make it a good one."

Early in the Project it become clear to the staff that the policies as well as the practices concerning student records in the New York City schools are in disarray. The absence of comprehensible guidelines relating to the collection, maintenance, and safe-guarding of records has the effect of giving school officials virtually limitless discretion in determining what goes into a child's school records and how these records are used. As a result, comments of the most personal and private nature,

sometimes going back to earliest childhood, follow a student throughout his school career. One parent found a notation that his child had been a bed-wetter. Another student's record observed that his father was a "black militant." And then there was this entry in a child's record"

> "A real sickie--abs, truant, stubborn & very dull. Is verbal only about outside irrelevant facts. Can barely read(which was huge accomplishment to get this far.
>
> Have fun."

A student's"anecdotal record," frequently consisting of pages of minor incidents of misconduct, such as talking in class, being late, refusing to hang up a coat, chewing gum, being in the halls without a pass, "talking back" to a teacher, often stays with him from class to class, from school to school, so that he can never escape the charges made against him when he was as young as six years old. Since parents and students rarely see such records, and have no right to correct inaccurate ones even if they did, the casual remark of an intemperate, or uninformed or hostile or mistaken teacher can have major consequences for a student.

By the time students get into high school, they are well aware that a "bad record" can cripple their future, a fact not lost on some school officials. Students engaged in unpopular political activity have often complained to us that they have been threatened with adverse college recommendations if their activities continued. Some students declined to openly distribute the Student Rights Handbook at their school until they had been accepted for college. One student who was not deterred found on his school record: "unauthorized distribution of ACLU Student Rights Handbook." Another student who appeared on a radio show and complained about school harassment of dissenters had that fact recorded on his permanent record. It is now the subject of a court case. And we are also negotiating on behalf of a student who, having been caught smoking a cigarette in his car, has been told that his record claims that the cigarette was in fact marijuana.

Whether or not the intent is malicious, the keeping of irrelevant or inaccurate record entries, and their transmission to other persons and agencies without the knowledge of parents or students,is a practice of far-reaching

consequences to a student's future. And yet, until recently, it had received almost no attention from the Board of Education.

The sloppiness of student records practices in the New York City school system must be blamed, at least in part, on the fuzziness of its policies. The official document by which school personnel determine their practices is a ten-year old circular, an ambiguous and sketchy four-page document. Essentially, the circular says that parents and guardians may only see the student's "official school record" which contains the most basic of data and is also available to school clerks and the like, but may not see the student's guidance record, anecdotal record, or any other more complete records maintained in the school. The circular also states that principals are authorized to give, without any mention of parental consent, "to accredited duly authorized representatives of recognized agencies . . . such information as may be deemed essential to the child's welfare." Such a broad definition can only lead to abuse. The circular goes on to authorize principals to release "any and all information

which is part of the official school record"--without the consent or knowledge of parents--"to police, probation or court officer, representatives of the District Attorney and to such New York City agencies and officials as the Corporation Counsel, Comptroller, Commissioner of Investigation, Department of Welfare, Department of Hospitals, Department of Health, New York State or Federal officers having competent authority or jurisdiction." I other words, anyone with a badge or a connection to a city, state or federal authority, has access to the record of any child enrolled in the New York City schools. Big Brother has carte blanche.

Interestingly, this circular was drawn up in clear violation of the New York State Manual on Pupil Records, which sets forth guidelines based on a decision of the Commissioner of Education in Matter of Thibadeau on September 20, 1960. The decision, clearly described and interpreted in the manual, gives parents the right "to inspect the records of their children including progress reports, subject grades, intelligence quotients, tests, achievement scores, medical records, psychological and psychiatric reports, selective guidance notes and

the evaluation of the students by educators." In short, all records in use by the district in relation to any student. Five of the categories on that list are expressly "not available" to parents under New York City Special Circular No. 63, which followed the decision by more than a year.

The state manual is also quite specific with regard to confidentiality, observing that "records of the kind here involved are privileged and confidential, ... [and] prevents the disclosure of the communication or record to third parties, i. e. to persons other than the parent and other than the person making the record . . . "

In the fall of 1969, to try to gain some clarification of the system's records policies, the New York Civil Liberties Union raised specific questions in a letter to the superintendent of schools. In his response, Dr. Irving Anker, then the assistant superintendent, stated that parents could review a child's "official school records," but he did not explain what "official" entailed. He did insist that counselors' files were

"confidential" and "may not be seen by any member of the staff other than the one specifically authorized to deal with the matter." He did not say if these records were available to parents. Dr. Anker added that records are available to third parties "only with the consent of the parent with whom the child is living," but he did not state what procedures were used to obtain parental consent. (In fact, the school system has none except a routine signature obtained from a parent when a child enters school which gives school officials blanket permission to release records to third parties for the extent of the student's tenure there.)

In the summer of 1970, partly in response to a new national concern about the delicacy of student record procedures and the need for clear guidelines, as publicized by the Russell Sage Foundation through its work on the problem and its published handbook on suggested guidelines, and partly in response to growing public complaints about the practices in New York City, the Board of Education appointed a commission to review policies and practices. The initial group selected for the commission included

only heads of the various administrative divisions of the Board of Education. Immediate complaints about the group being simply an in-house committee with no variety of views led to the addition of a few outsiders, including representatives from the City University of New York, the Citizens' Committee for Children, the American Jewish Committee and the NYCLU's Student Rights Project. Diane Divoky of the Project, who had been investigating some facets of the area, became a member of the commission and soon its chairman for the areas of safeguarding confidentiality.

One development during the work of the commission gives a significant insight into the dynamics of most student rights issues. A coalition of the outsiders urged that, since the extensive work of the group was going to mean that no systematic reform would be possible for another school year, and since abuses based on the old policies were so rampant, an interim circular should be promulgated by the Chancellor, which would set forth the basic right of confidentiality and reduce current violations. The commission agreed to this, and Special

Circular No. 22, 1970-1971 was issued on "Confidentiality of Student Records." Except where there was a court order, it prohibited the release of all information concerning a student without "a written consent of a parent or legal guardian."

The response was immediate. Angry high school principals, through their Association, began to exert pressure on the Chancellor's office to allow them to continue their old practices. Although he had the state guidelines and his commission behind him, the Chancellor gave in. Exactly two weeks after he had announced the new circular, the Chancellor rescinded it, and told school officials to return to the use of the old Special Circular No. 63. To appease the members of the commission the Chancellor promised them that the work of the commission would be speeded up and a new set of policies would be enacted by the Chancellor as rapidly as possible. A year later--and nine months after the conclusion of the commission's work--no guidelines for student record policies have been announced.

B. Drugs. Mounting public alarm over the presence of drugs in the schools has put the Board of Education under enormous pressure to use whatever means are necessary to deal with the problem. As during any period of public demand for vigorous law enforcement, little attention has been paid to traditional values of individual liberty. The resulting abuses have been manifest throughout the life of the Project.

In January, 1970, a high school social studies teacher sent to the Project a copy of a letter he had written to the Board of Education telling of his discovery that a police undercover agent had been posing as a student in one of his classes. In eloquent and passionate terms, the letter warned of the dangers to liberal education posed by such a practice. He received no reply.

In an effort to put some pressure on the Board, the Project contacted James Wechsler of the New York Post, who interviewed the teacher and wrote a very sympathetic story. At the same time we wrote the Board complaining that even the evil of drug abuse did not justify the presence of undercover agents in the classrooms, with the attendant spectre of a police state keeping watch on ideas

expressed by students and teachers.

The then-president of the Board, Joseph Monserrat, replied a few weeks later. He just stated that the Superintendent knew of no instances of police keeping watch on ideas expressed in the classroom. And with the innocence born of a generation still untouched by disclosures that even the Congress was subject to police surveillance, he promised that the Superintendent "would not tolerate such activity if it did exist."

But then he put the problem in perspective and gave us fair warning of just how much weight the Board gave to such values as academic freedom and personal privacy. He observed that the community was "aroused" by drug pushing in the schools and was demanding"that no effort be spared" to stop it. He continued:

> "Where the police feel that detection of such narcotics pushing can be made possible by plainclothesmen activity within the school, it is difficult to see how school authorities can refuse to cooperate. We trust that the New York Civil Liberties Union will concur in our community's concern that no steps be left unturned to halt the spread of narcotics-pushing evil."

Though reaffirming the Board's committment to academic freedom in his closing paragraph, there was no assurance that undercover agents would not continue to invade the classroom. To the contrary, there was every reason to assume that, given the public's concern about drugs, little would be allowed to stand in the way of any program designed to eliminate them from the schools. The Project's subsequent experiences confirmed this assumption.

In late 1970, it was suggested to us by Dr. William Rosenthal, deputy director of the New York City Bureau for Health and Physical Education, that the city's Department of Health was beginning a new drive to have school personnel identify drug users. In the past the schools had only been asked to submit statistical information on students who are drug users and suspected drug users. Now, we learned, school personnel would be expected to identify individuals and have them placed on the city's Narcotics Register. The form which teachers, suspecting a student of drug use, would be asked to fill out asked for the student's name, date of birth, birthplace, ethnic group, sex, mother's name, present and previous address, social security number, and kind of drugs used.

The Project prepared a legal memorandum for Dr. Rosenthal demonstrating the legal problems involved in cooperating in such reporting of students. Nothing happened until we received a call from a guidance counselor who said that the medical personnel at her school had begun a move to have school staff fill out forms identifying drug users.

A call to Dr. Olive Pitkin, director of the Department of School Health, verified the new procedure, although Dr. Pitkin said the move was somewhat premature. She said the project was an experiment in District 2, but plans of the Department of Health were that it would then be adopted by all school districts in the city.

We alerted Peter J. Strauss, a lawyer who was then president of Community School Board #2, to the new practice in his district. He checked with the school administration, and reported back. A month earlier, he said, the Department of Health had come to the district school officials asking to introduce the program into the district. The administrators had turned them down cold, Mr. Strauss insisted. They had also refused to allow into the district a test

asking students about their use of drugs, which other districts had allowed to be administered to students. That test had questions such as: "When did you begin using heroin?" The Project had received complaints about the same questionnnaire from parents at P. S. 122 in Queens, who felt that the test's administration without the consent of parents was an invasion of privacy.)

Mr. Strauss insisted that top officials in the district had vetoed the registration at least a month before the school nurses were asking guidance counselors to begin identifying student drug users. He was grateful for the information we passed along, and said he would investigate further.

In the summer of 1971, one of the members of the Board of Education proposed that all students using drugs be sent to separate schools with special treatment and rehabilitation programs. The proposal called for training teachers to identify and report the students who used drugs, to be supplemented by compulsory urinalysis tests for all students. This approach was endorsed by WCBS-TV in an editorial.

NYCLU responded with a lengthy letter to the Board member deploring the proposal. In addition, the Project director taped an editorial reply to WCBS-TV. Both the letter and editorial reply noted the conspicuous failure of the Governor's much-publicized program for treating addicts and cautioned against making teachers into informers and law enforcement agents. So far the proposals have not been pursued.

The Project is also participating in two major cases involving a student's right to be free from unreasonable searches under the Fourth Amendment. In both cases, the object of the search was drugs. In one, a student was personally searched; in the other, a student's locker was searched. Both searches would have been illegal if made of adults.

C. Budget Cut Politics. In the spring of 1971, the New York City school system was threatened with major budget cuts. The Board of Education held meetings where parents were told that their children would lose their reading teachers and their free lunches. A massive rally at City

Hall, sponsored by the United Federation of Teachers, demanded the reinstatement of the cuts.

Some parents disagreed, and the Project, upset that their children, in schools around the city, were being required--as part of a lesson--to write letters to the governor and other state and city officials asking for the restoration of the cuts. In some schools, the children were used to involve their parents and other adults in the lobbying. In an elementary school in Queens, kindergarteners were rewarded with a lollipop for each parent letter they brought in protesting the budget cuts. In other classes in the school, prizes were offered to students bringing in the most letters. In an elementary school in Manhattan, children were told to make posters urging the restoration of the cuts, and then marched around the school carrying the posters during school hours.

At Jamaica High School in Queens, teachers of English and social studies assigned protest letters to the governor or legislative leaders in their classes. A student who refused to write a letter was given a "U" grade, which means unprepared. At Bushwick High School in Brooklyn,

the principal used the public address system to speak for the restoration of the cuts, and urged all students to attend the City Hall rally, not mentioning that such attendance would mean cutting half a day of classes. At Sheepshead Bay High School in Brooklyn, the acting principal interrupted classes to announce over the public address system that during the following period all students would write a letter to Albany about the proposed budget cuts. One student, then in his math class, refused to write a letter, explaining that he was vehemently against the budget cuts but that he did not feel he should be required by the school administration to write such a letter. The letter-writing procedure took an entire period. When he protested the interruption of classes for this purpose to the acting principal, he was told that he was wrong, and that no one else had objected. The same letter-writing campaign was conducted with the afternoon session of students that day.

On May 20, 1971, NYCLU sent a letter to Fred Hechinger, the education specialist of the editorial board of the New York Times, relating these incidents. A few

days later, a Times education reporter was put on the story, and called us. Our comments protesting the use of classrooms to compel students to take pre-defined political positions resulted in an article in the Times, followed by an editorial titled "The Wrong Lesson" the following day.

> ". . . nothing in the educators' legitimate alarm justifies their widespread use of the children as a conscript force--ordered to march through the streets in protest and assigned in class to write and mail letters to Governor Rockefeller denouncing the planned cutbacks. Even more inexcusable are reported instances in which pupils were penalized for failure or refusal to carry out such assignments. No free citizen, at any age, should be forced to support a political action, no matter how laudable. To let such coercion become part of a school's requirement is an appalling lesson in politics and an affront to pedagogy."

This was one of those cases where but for NYCLU's protest the practice in all probability would have gone unnoticed.

D. Tracking. Tracking is so indigenous to the New York City school system that it is difficult to sort it out from the other injustices of the system, and it is so pervasive that it is hard to recognize as a form of discrimination until an extreme example becomes an issue.

Although the Project has begun no litigation concerning tracking, the staff has spent a good deal of time in collecting information about the area. This has included investigations into the practices of setting maximum and minimum grades for the various tracks within the high schools (thereby freezing students within a track), the practice of tracking even in kindergarten, and the selection procedures for entrance to the city's specialized high schools.

In the primary grades, we found that "ability grouping" or tracking was the commonly accepted practice. Kindergartens are often tracked along racial lines by dividing "those who have gone to nursery school from those who haven't." Reading readiness tests given at the end of kindergarten corroborate these patterns.

"Ability grouping"--which divides students into tracks in the earliest grades--is a device extremely attractive to teachers, who feel their tasks are simplified by this arrangement. However, a survey of studies done over the past ten years of the effect of such grouping

on students indicates that such tracking either has negligible or negative effects on students tracked into "good" classes" and generally negative effects on those in the lower tracks. There is no educational evidence that tracking is valuable educationally or psychologically for the majority of students.

One particularly unpalatable offshoot of tracking in the high schools is the imposition of maximum and minimum grade requirements on the various tracks. This procedure varies in rigidity and form from high school to high school, but a typical rule is that students in the academic track are not given grades below 85; students in the general track are not given grades above 75 or 80; and students in the general track are never given failing grades (below a 65) as long as their attendance is somewhat regular. The rationalizations for this system--that a student in an academic track always deserves a higher grade than the best student in the general track; that students are competing not against each other but against some kind of amorphous abstract standard; that general

students, by their very placement in those classes, are not worthy of good grades; and that general students are to be moved along through their programs as expeditiously as possible--are uniformly suspect. In any case, the effect is that a student who is assigned a low track in the primary grades will almost certainly remain there throughout his school career. The absence of any effective education in those tracks is generally conceded. One high school teacher described a successful day in a "general" track class as one in which there were no serious disturbances. The roles of teachers in those tracks are essentially custodial. Diplomas issued to students graduating out of those tracks signify, according to the Citizens Committee for Children, "little more than that the children got their bodies to school and kept them there most of the time. It does not mean that they were touched and taught by our schools."

Tracking, a nation-wide phenomenon, may be responsible, more than any other single factor, for the observation in a recent report on high school dropouts that "once they were out of school, the dropouts' self-esteem increased. . ."

(New York Times, Nov. 6, 1971). A system which sorts students almost from the day they enter school and labels some of them "slow" and places them in "slow" classes, deprives them of their dignity and self-esteem. It is a perception of themselves which is reinforced every day they remain in school.

The grading quagmire becomes murkier still with the introduction of "coded" grades, which operate in the vast majority of New York City high schools. Coded grades work in this manner: in one high school, a student who has been tardy for a class more than 15 times is failed with a '49'; a student who has been absent from a class more than 15 times is failed with a '39'; a student who is one notch below passing--which is '65'--is given a '55'. A student who has more than 15 unexcused absences from school is given a '39' in all subjects. The practice defies the general assumption among students and parents that grades are based on a scale of 100 points and the number obtained indicates achievement on that scale. Thus, a student who has passed all the tests designed to measure his achievement in the course may fail and have

to repeat it merely because of absences.

The final step in the tracking process in New York City is the admission procedures for the specialized high schools, Bronx High School of Science, Stuyvesant High School, and Brooklyn Technical High School. In the past year, public debate has begun over the racial composition of these schools which are about 85 percent white in a school system that is less then half white. The debate over admission procedures for the specialized schools was initiated by a group of parents from Manhattan's District 3, a highly integrated but predominantly black and Puerto Rican school district. Despite a well-organized tutorial program, a number of students taking the test had failed to achieve scores above the cut-off point for admission. The parents and their district superintendent publicly called for an investigation of the test. The Project met with them to explore legal action as well as means for publicizing the situation.

The District 3 people held a press conference charging that the test was culturally biased, a charge which

had led New York City in the past to abandon use of IQ tests. Their claim that the validity of the test--its ability to correlate scores with school performance--had never been verified was confirmed by the designer of the test in a lengthy interview with a Project staff member. More fundamentally, they pointed out that schools all over the country which had selective admissions procedures had long ago found single test scores to be an unreliable basis on which to select students.

The controversy provoked wide public debate and the appointment of a commission by the Chancellor to study the entire question. At the same time, New York City members of the state legislature, seeing a threat to New York City's most exclusive and prestigious public schools, succeeded in obtaining passage of a bill requiring continued use of the test as the sole admissions criteria.

Research carried out this summer by the Project, in conjunction with the Metropolitan Applied Research Center, has revealed that certain junior high schools actively encourage their students to take the specialized high school exams, while others, usually in the ghettos, barely even publicize the examination date. A large amount of data about the test was compiled

in a report and submitted to the Chancellor's commission, which has yet to announce its findings.

E. Security Guards. The Project staff has received a number of complaints from students and parents about security guards at their schools. Students described them as "bullies", "tough guys who don't know about how the school operates and what you can and can't do." Students told of incidents where their program cards and other identification were demanded of them by men they had never seen before, who refused to show the card security guards are required to carry on their person or even to acknowledge that they were security guards. These were situations in schools where the student body had never been formally introduced to the security guards, or received any explanation of their relationship to the administration, the police, or the students.

To learn about the 430 officers of the security guard program, the Project staff interviewed school officials in the spring of 1970 and of 1971. They described the security guard force as a poorly-managed and untrained body whose role in the schools is unclear to themselves, principals and students. There is perhaps no other police force in the country which can

make arrests but need not wear any identifying uniform or badge or meet any educational or training standards.

Several incidents of students being beaten by security guards were reported and at least one principal ordered a guard to stay out of his school. The Project has filed a damage action against the Board of Education on behalf of a student's mother who was handcuffed and struck by a guard.

With increasing pressure from the public and the staff for more security guards, the Project has placed the Board on notice that it will be held responsible for any further abuses committed by its inadequately trained security force, and has continued to press NYCLU's view that the solution to student alienation cannot be increasing the number of police in the schools.

F. Music and Art High School. Music and Art is one of New York City's specialized high schools, admitting students by a competitive exam. Despite the steady increase in admissions of black and Puerto Rican students, the representation of minority group students is still below the city-wide average in the school system. More importantly, it still has very

few black and Puerto Rican faculty, and even those only after intense student and parent pressure over the past few years. Except for one course in gospel chorus, the music and art curricula barely treat the black and Puerto Rican experience.

In the past two years, tensions had flared up around several issues. The Black Security Council, the very effective organization of black and Puerto Rican students, regularly held meetings in the school. A school rule required a faculty advisor to be at all student organization meetings. The only non-white faculty member willing or able to be the BSC's advisor was unable to come to a planned meeting, so the students met without him. A faculty member, a dean, and finally the principal came seriatim to enforce the rule and insist that the meeting be broken up.

On another occasion, some teachers and then the principal objected to some literature which the BSC had put on the student bulletin board. They felt it was racist and tore it down.

Later disputes involved programs celebrating the birthdays of Martin Luther King and Malcolm X, and refusal of the school to close in memory of the deaths of six black stu-

dents in Georgia, although it had closed over the killing of the four Kent State students.

The biggest event on the school calendar is the Semi-Annual show. Presented once each semester, the show is an opportunity for students to demonstrate what they have learned in school. Since the music curriculum has almost no black or Puerto Rican music, the show has been almost exclusively devoted to European music.

For the Spring show, the school had decided that extra-curricular and cultural groups would have a separate night for their performances and the Semi-Annual show would remain in its traditional form. Many students were wholly dissatisfied with this arrangement, but the special night was scheduled--on Mother's Day--and approximately 300 people showed up (as compared to attendance of approximately 1500 at the Semi-Annual show).

The gospel chorus had been rehearsing under the direction of Mr. Fisher, the teacher who taught the course, for performance in the Semi-Annual. He envisioned the gospel chorus number as having instrumental support and a dance group on stage. When the principal learned that the performance

would not consist of just singing (which was all that had been a formal part of the curriculum), he advised Mr. Fisher that the students who were dancing and playing instruments could not participate. They had been in rehearsal for weeks. When the students learned of this decision, they met with various school officials as well as the principal--to no avail. The administration would permit no exception to the rule that this was strictly a curricular performance.

On Friday, May 21, the weekend of the show, several hundred students sat in in the outer lobby of the school. There was no violence; they did not attempt to interfere with other students going to class or with teachers performing their duties. Although a delegation of students sought to meet with the principal, he refused to negotiate with them unless they ended the sit-in.

The principal ordered the students to leave the lobby and they refused. Despite the participation of several hundred students, only two students, Manny and Wilfredo, were suspended.

Manny and Wilfredo were two of the best known, most articulate and most respected leaders of the Black Security Council throughout their school careers. Both were due to

graduate in June, 1971; both were entering college in the fall, with full scholarships, one to Vassar, one to Columbia. A hearing was scheduled for four days later, during which time they were not permitted to come to school. Exams were only a few weeks off.

During that time, the Consultative Council, composed of students, faculty and parents, recommended that the suspensions be lifted. The Parents Association endorsed that recommendation. Both organizations had worked closely with the principal throughout the school year and had a substantial voice in school policy. Their recommendations on the suspensions were ignored. In addition, the Urban League, Haryou-Act, the United Federation of Black Organizations, the Council Against Poverty, and the Harlem Education Program all offered their services to attempt to mediate the dispute.

At the beginning of the hearing, we brought to the hearing officer's attention the offers of all these community groups and suggested that under clearly stated Board policy, a suspension hearing was not to take place until the services of parents, school and community groups had been enlisted in order to resolve the underlying dispute. The hearing officer refused to follow that policy and continued with the hearings.

[P.65 eliminated in revision 7/72.]

In the course of the hearing, a former officer of the Parents Association and the newly elected president, both white, testified extensively to the constructive roles played by both Manny and Wilfredo at the school. They expressed their strong disagreement with the principal's unbending attitude on the Semi-Annual show and with his action in suspending the students.

The hearings lasted two days, after which the superintendent upheld the suspensions. He decided to allow them to take exams so that they could graduate, but prohibited them from coming to school. Emergency appeals were taken to the Chancellor and Board of Education to effect their reinstatement before classes ended. No answer to those appeals was received before the end of the school year.

G. George Washington High School.

In the Spring of 1970, George Washington High School became the battleground over the demands by parents and students for greater involvement in school policies. For weeks the school was in newspaper headlines. Massive numbers of police patrolled the school corridors and grounds. 15 or 20 students were arrested. Ultimately, after hearings in which the Project represented a number of the students, most were reinstated.

We felt that the issues involved at George Washington were of fundamental concern to the Project. As we saw it, the underlying principle at stake was the right of parent and student

groups to negotiate their grievances with school officials and to participate meaningfully in the resolution of those grievances. Yet the press was writing the story in terms of a confrontation instigated by "militant" and "extremist" community groups, as if no legitimate issue existed. It was a view apparently shared by the United Federation of Teachers. NYCLU believed that the UFT should have been particularly sensitive to demands to negotiate a grievance procedure since teachers too had been called "militants" when they first organized to make such demands.

To get a closer view, the Project had at least one member at the school almost every school day during the dispute. An observer was present at every negotiating session and every major meeting of parents and students. Countless official and unofficial documents were studied.

On April 16, 1970, NYCLU published a report on the George Washington dispute. The report stated our support "in principle of the right of parent and student groups to negotiate their grievances with school officials and to participate meaningfully in the resolution of those grievances, as in the past we have supported the same right for teacher groups." The

report concluded by finding "a deep insensitivity to legitimate grievances" and an exciting--if unrealized--potential for a "partnership of teachers and parents."

The report urged immediate negotiations aimed at setting up a grievance table under the supervision of the principal for the purpose of receiving complaints to be transmitted to the professional staff. The proposal was met with silence and never implemented. Instead, tensions deriving from the dispute were met with increased security guards.

H. Charles Evans Hughes High School.

Hughes is a 90% black and Puerto Rican school located in Chelsea. Although Hughes is zoned for the predominantly white Chelsea and West Village area, white students are allowed to go cross-town to Seward Park High School, which is predominantly white.

Hughes has a fairly militant student body. Student government is called the Student Power Organization. The school symbol is a panther, a fact which drew almost no attention throughout the school's history. The SPO had a flag made in the spring of 1970 with a background of red, green and black (the black

liberation colors), with the panther and the words Charles Evans Hughes High School. The SPO presented it to the student body. The principal barred the students from accepting it, saying it presented a partisan and sectarian point of view. The students replied that it was only symbolic of the school's committment to freedom for all peoples. In any case, the students argued, the Board of Education has allowed it to be a sectarian school, so why shouldn't they have a sectarian symbol?

They made an appointment with the superintendent for Manhattan high schools last May. When they got there, he was not. They were told instead to meet with his assistant. Although he was told there were substantial legal issues involved, he would not meet with them in the presence of a Project attorney. During the meeting, he told them that the principal's decision would be upheld. They got a letter to that effect on June 24, 1970, from Mr. Wolfson, the superintendent.

The issue was renewed in the fall. There was a demonstration one day and an assembly was taken over. Tensions began to build up at the school and a meeting was set up with Deputy Chancellor Irving Anker. He too would not meet with the students in the presence of a Project attorney. At the meeting, called to discuss

the entire situation and presumably to solicit the students' views, he handed them a policy which had been adopted by the Board of Education the previous day, without discussion and without consultation. The decision was to allow the students to display the flag as long as it was not represented as the official school flag. Since then the flag has been displayed at school activities without incident.

I. Accountability. In the spring of 1971, the Board of Education entered into a contract with the Educational Testing Service to prepare a plan that would measure teacher performance and thereby create a system of accountability. The contract contemplated measuring teacher performance against expected levels of student achievement, and postulated that expected levels of student achievement should be determined by "school factors" and "non-school factors." The latter will include economic and educational levels of parents, the number of books in the house, etc.

Dr. Kenneth B. Clark asked NYCLU to intervene on the ground that considering such "non-school factors"as a determinant of expectation for student achievement will result in systematically lower expectations for non-white children, and therefore lower levels of "satisfactory" teaching in ghetto schools. NYCLU engaged in extensive correspondence with Chancellor Harvey Scribner about this danger, and in preparing a legal memorandum for the Chancellor's Committee on Accountability.

D O C K E T

FREE EXPRESSION

1. Caplin v. Oak. Among the rights afforded students in the Board's Statement on Rights and Responsibilities in July, 1970 was the right to distribute literature on school property. Nevertheless, distribution of our Handbook, advising students of those rights, was prohibited at several high schools. Among the reasons for the prohibition was that it was obscene, apparently for its use of the word "fuck" in a quotation from a federal court opinion (which had upheld the use of the word in a student publication). Some principals also complained that the Handbook contained inaccuracies. One said it incited students to exercise their rights.

We wrote to the Chancellor protesting the prohibition and never received an answer. A lawsuit followed which has been temporarily resolved by a Stipulation which insures the right of students to distribute literature without having to submit it to school officials for prior approval. The Stipulation obliges the Board of Education to take appropriate disciplinary action against any school officials interfering with students' rights and to publicly post the provisions of the Stipulation in all schools which had barred the Handbook. It also requires "prompt disposition" of all appeals involving distribution.

2. Joy v. Yankowski. Joseph Joy, a senior at Brentwood High School on Long Island, and president of the Student Council was suspended for "bringing controversial literature on school property without permission." He had brought anti-war literature into the student council office and later distributed it to other students. When it was discovered there by a dean, he was suspended. Action was brought in Federal court the next day and the judge ordered his immediate reinstatement. The suit was discontinued upon entry of a consent decree by the school that they would not interfere with students who distributed literature on school property.

It now appears that the principal will not permit students to distribute the court's order. If not, we will seek damages and a contempt judgment.

3. Common Sense. The District Attorney of Dutchess County brought a proceeding to enjoin distribution at Arlington High School of an underground newspaper called Common Sense. The newspaper contained articles about ecology, homosexuality, poverty, women's liberation, etc. It contained a sexually graphic cartoon and some strong language. The principal testified that he had received many complaints from parents about the newspaper and that the newspaper was obscene.

The court, applying New York's "variable obscenity" statute which was upheld by the U. S. Supreme Court, found the newspaper obscene for minors and without socially redeeming value, despite the testimony of several experts who found the newspaper thoughtful and reflecting a point of view not found in the "establishment" media. The court said: "Children are to be protected by their parents and by the State from exposure to foul 'literature'; and no less so than from contaminated milk."

The court found that the newspaper was obscene for minors and enjoined distribution on high school property.

The decision is being appealed.

4. Frain v. Baron. This litigation was begun in the fall of 1969 on behalf of two junior high school students and Raymond Miller, a student at Jamaica High School, all of whom refused to stand during the flag salute on grounds of conscience. In December, 1969, a federal judge issued an injunction prohibiting any interference with those students in the New York City public schools who wished to remain seated during the flag salute on grounds of conscience. Nevertheless, in the spring and fall of 1970, students at Jamaica High School who remained seated during the flag salute, continued to complain of threats and harassment by school officials. Many told of threats that college recommendations would reflect their action and complained that school officials read them a contrary decision by the Commissioner of Education which had ruled against students in upstate New York making a similar claim.

We went back before the same federal judge who ruled that the Commissioner's decision did not affect the rights of students in New York City, that students could not be removed from class

because of refusal to stand, that they did not need parental permission in order to remain seated, that records of their action could not be transmitted to persons outside the school and must be destroyed upon graduation, and that the principal cannot force students to stand whose beliefs he does not consider to be conscientiously held.

5. Matter of Sklarsky, et al. Student government leaders at Bushwick High School in Brooklyn contended the narrow jurisdiction of the school's student court, which could deal with behavioral infractions but not student grievances or rights. Their dispute with the principal led to an appeal to the assistant superintendent, who upheld the principal. While an appeal to the Chancellor was pending, the principal instituted a tight censorship policy of all student media concerning the student court and allied issues. When the student leaders resigned their posts over the censorship issue, their resignation statements were also censored. The Chancellor denied the appeal for the wider jurisdiction of the student court, leaving the matter in the principal's domain. He noted, however, that

> "the request of the Bushwick students in this case is not to lessen the authority of the principal but to increase the areas of student responsibility for which the principal may hold them accountable. If one of the aims of secondary education is to plan for, encourage, and make possible experiences which will extend and strengthen the development of self-discipline among students, the request being made by them for a student court with wider jurisdiction is an excellent opportunity to accomplish this purpose."

He ruled in favor of the students in their censorship claim.

> "It should require little argument that the preventing of publication of an article because it 'called into disrepute the school administration' is to practice the very censorship of ideas and stifling of criticism and dissent that is prohibited by the Statement of Rights and Responsibilities as well as by the First Amendment."

The decision stated that the actions of the faculty advisors and principal in censorship of the student media

> "are not justifiable in the name of avoidance of defamation or under the rubric of 'responsible journalism.' . . . Where, however, the sole issue is accuracy or tone, the role of the faculty advisor is not that of censor but is that of critic and advisor. . . . While the principal is ultimately responsible for the content of official school publications, subject to the guidelines of the Statement of Rights and Responsibilities, the principal is neither expected nor required to personally review each and every article that is written, nor is he authorized to re-write articles because he disagrees with the accuracy of the article.
>
> "Students have the right to express themselves in their press or in their comments even when their statements seem distorted to the principal or the faculty. They even have the right to be wrong in the conclusions they draw from the facts and situations they present. The principal and the faculty have no right to reduce all student articles or comments to what is considered an acceptable level either in the name of 'responsible journalism', or 'school security.'"

6. Matter of Rausher. Sheepshead Bay High School insisted on prior review of the speech of a candidate for president of the Student Government Organization, Mark Rausher. The faculty advisor censored the speech, and the student withdrew from the election in protest. In his initial appeal of the matter, the assistant superintendent hearing the case refused to allow the student's attorney to be present and then decided the case adversely to the student. An appeal to the Chancellor of the New York City schools resulted in a policy which extended the prohibition against censorship of the written word to the spoken word.

> "A rule which required prior review of all speeches would mean that the student who chose to speak extemporaneously could not run for student office. The student who deviated from a prepared text during delivery would do so at the risk of punishment for not following the sanctioned speech. To carry such a procedure to its logical extremes, the student could not answer questions unless he submitted his answers for review in advance. While the school has the right to explain to student speakers that obscenity, defamation, and advocacy of racial or religious prejudice are to be avoided, the Statement of Rights and Responsibilities does not require or authorize that speeches be approved in advance. Any such rule would be unworkable at best and would constitute a serious impairment on the rights of free speech."

7. Matter of Williams. Students at James Monroe High School, with our assistance, brought an appeal to the New York City Chancellor and Board of Education complaining of a school requirement that all publications be submitted to the principal prior to distribution. A written opinion was issued upholding the requirement of prior approval only for official school publications, but prohibiting such a requirement for non-official literature distributed on school property. In rejecting the principle of prior censorship for all literature, the Chancellor held:

> "To permit any system or requirement of prior censorship would invite abuses which would be difficult to alter after the fact. A handbill announcing a rally or a football game would be of little value if permission to distribute it were given only after an appeal held several weeks after the event in question."

On the matter of the right to counsel, the Chancellor stated: "Because questions of student rights often involve important quasi-legal and legal issues, it is clear that an appeal by a student is not merely an interview. The student should have the right ot be accompanied by an advisor if he so chooses. This advisor may be an attorney. . . ."

8. Eisner v. Stamford Board of Education. This case challenged a Stamford Board of Education requirement that all materials distributed on school property had to be submitted to the school principal for approval. The Court of Appeals for the Second Circuit, although upholding the requirement in principle, found it unconstitutional in that it failed to assure a prompt review of the principal's determination, did not specifically define the kinds of materials which could be prohibited, and failed to adequately define the kinds of materials which had to be submitted.

> "But this right and duty (of the Board of Education to punish disruptive conduct) does not include blanket prior restraint; the risk taken if a few abuse their First Amendment rights of free speech and press is outweighed by the far greater risk run by suppressing free speech and press among the young. The remedy for today's alienation and disorder among the young is not less but more free expression of ideas.. . . Student newspapers are valuable educational tools, and also serve to aid school administrators by providing them with an insight into student thinking and student problems. They are valuable peaceful channels of student protest which should be encouraged, not suppressed."

9. Katz v. McAulay. Students at Ardsley High School in Westchester County sought to distribute leaflets about the "Chicago Conspiracy Seven" trial. The leaflet asked for money for their defense. They were denied permission by school officials

to hand out the leaflets in the school pursuant to a rule prohibiting distribution of leaflets without written approval of the Board of Education and to a rule prohibiting all money collections on school property.

This case raised issues which have recurred in New York City schools where students have been denied the right to sell political buttons and newspapers. The Supreme Court has accepted for review a case from Texas in which an absolute ban on all on-campus solicitations was invalidated.

The District Court here denied our claim. The decision was affirmed by the Court of Appeals, with one judge dissenting. The dissenting judge observed that the right to solicit funds was an important adjunct to political freedom and that the standard should be the same as for any First Amendment activity on school grounds, namely that there be no material disruption. A petition for certiorari is pending before the Supreme Court.

10. President's Council, Dist. 25 v. Community School Board No. 25.

A Queens community school board received a complaint from a parent about a book in a junior high school library within District 25. The book, DOWN THESE MEAN STREETS by Piri Thomas, depicts life in Spanish Harlem, using harsh and graphic language and some four-letter words.

Describing some of his adolescent experiences, the author describes a homosexual encounter as well as two or three heterosexual experiences. At a public meeting to discuss the Board's action, a broad coalition of civic groups, educators, librarians, parents and students opposed removal of the book from the junior high school library in which it appeared. The Board, nevertheless, voted to remove the book.

We brought suit in federal court in behalf of parents, students, a librarian, a principal, and two teachers seeking to have the book put back on the shelves. We argued broad principles of academic freedom. In response to the claim that the book was inappropriate for students in this age group, we introduced statements of students who had read the book, educational and medical authorities on adolescents, the review of the School Library Journal recommending the book for teen-agers, etc. One of the school librarians who ordered the book pointed

out in her affidavit that the book clearly was not appropriate for all children in the school but, given the enormous variations in reading ability and emotional maturity of junior high school students, no book in the library could possibly appeal to all students. It was necessary to have books on the shelves which appeal to the most mature (as did this book) as well as to have books for the less sophisticated students. Since students were not compelled to read this or any other library book, it should remain available to those students who wish to read it. The court upheld the action of the local board, saying that the school board had absolute power to remove any book from the school libraries. An appeal is pending before the Second Circuit.

11. Shakin v. Schuker. David Shakin was one of the students who complained of harassment by principal Louis Schuker of Jamaica High School for refusing to stand during the flag salute ceremony. In January, 1970, he appeared on a radio program with another Jamaica student and complained of various practices restricting students' rights at Jamaica. A few months later, his parents went to the school to look at his school record. It contained the following entry: "Radio program denouncing school for harassment, WBAI." After a suit was filed, letters to the superintendent, Chancellor and Board of Education asking that the record be expunged went unanswered. The record was expunged. The judge dismissed the suit because the relief had been granted, but observed:

> "Nevertheless and in spite of the foregoing, the court feels constrained to comment upon the conduct of the respondents herein. It is almost inconceivable that in this enlightened day and age a professional administrator could permit the entry in the record of a student of an item which is not only totally irrelevant but obviously unconstitutional.
>
> Additionally, there appears to be no excuse whatsoever for the inordinate delay between petitioner's objection to the entry of the item and the time it was actually expunged by the respondents."

12. Lynbrook High School. In late October, a few of the student editors of a newspaper at Lynbrook High School, Long Island called to report a dispute they were having over two articles which they wished to publish. One article was about the vote of the school band not to participate in the Memorial Day parade. The other was a report by Peter Davies of the white wash of the Kent State killings. After reviewing these articles we told the students that they were protected by the First Amendment. The student editors continued to press for their right to publish these articles and were dismissed from their editorial positions by the faculty advisor and principal who felt the articles were too controversial and might lead to unfavorable reaction by some groups in the community .

The press picked up the story. An emergency hearing was held before the Lynbrook school board at which the editors appeared with a Project lawyer as counsel. The result of this hearing was reinstatement of the student editors and adoption of an editorial policy which permits censorship by school officials only on the legal basis of "libel, privacy, obscenity and copyright." (The editorial policy had originally been proposed by the students last year and was watered down by the principal to give him control over "good taste," "consistency with school policy," etc.)

The students have subsequently printed their newspaper with the disputed articles. A letter to us from the editor-in-chief about this incident states, "We learned a great deal--perhaps more than our entire formal educational experience has ever taught us."

Our Nassau chapter reported that the Lynbrook case was being closely watched by other school communities throughout Long Island.

7/72 ADDENDUM. Koppell v. Levine. This federal action permitted distribution of a student literary magazine at John Dewey High School which had been barred by the principal, the Chancellor, and the Board of Education as obscene. As of July, 1972, a motion has been filed in this case asking for a declaratory judgment which would declare unconstitutional the prior review procedures of the Board of Education.

DUE PROCESS

13. Matter of Rose. Mark Rose was suspended from Fort Hamilton High School in February, 1970 for leafletting on school property although there was no evidence that he had disrupted any school activities. The letter of suspension charged the following misbehavior:

> "Open and persistent defiance of school regulations; serious disruptive behavior; chronic and prolonged truancy."

A hearing was held before a superintendent who upheld the suspension and ordered Mark transferred.

Appeal was taken to the Commissioner of Education, who invalidated the suspension and transfer on the basis that the hearing did not comply with due process requirements. He cited the following grounds:

> 1. The generalized statement of charges did not give adequate notice of the specific conduct of which he was accused.
>
> 2. The admission of unsworn statements by several teachers denied the student an opportunity to cross-examine the witnesses against him.
>
> 3. Although a tape recording of the hearing was made, it was so unintelligible as to deny the student his right to effectively appeal.

14. Matter of Castelli. Robert Castelli was a student at Fort Hamilton High School who had been active in protesting various policies of the school principal. He had been suspended in early February because of his "attitude" and for other reasons equally vague and unspecific. Upon his return to school, the principal was still dissatisfied with his attitude and wrote to Robert's father as follows:

> "As you recall, when you were in my office with him last week he refused to use the word "yes" and insisted that he would only say "yeah". Since that is still his stand, and since I can see no prospect of controlling him in larger things if I cannot even succeed in changing one word, I have placed him in the Dean's office for the day in the hope that you can get him straight.
>
> "I hope you understand that I cannot possibly control the behavior of 4,000 pupils if they were permitted such stubborn refusals. It is hard for me to believe that during the week when he had been suspended from school, you have been unable to get him to change one word. I hope you recognize that what is actually involved is not the one word, but the question of whose will shall prevail. That is a matter that I cannot ignore, if I hope to remain in charge of this school."

A few weeks later, the principal again wrote Mr. Castelli enclosing a leaflet printed by the High School Student Union which Robert was distributing on the street off school grounds. The principal conceded that Robert had a legal right to hand out the circular, but went on to say:

> "On the other hand, as I feel quite certain that you do not agree with the contents of the circular, I am bringing it to your attention so you may cooperate in improving your son's thinking.
>
> "Naturally, our judgment of Robert, and the nature of his school references, will have to be influenced by such expressions of his opinion. I shall appreciate some expression of cooperation from you."

The circular protested harassment of students by school officials and the police.

Robert was suspended again in May, 1970, after another angry confrontation with the principal. He was charged with "defiance of school authority, gross disorder, destruction of school records." After a superintendent's hearing, his suspension was upheld and he was transferred to another school. On appeal to the Board of Education, the Board reversed the suspension and established broad guidelines for the conduct of suspension hearings. Among the Board's requirements:

> 1. Charges must be stated with precision: allegations of "defiance of school authority" and "gross disorder," the common charges in suspension letters, were ruled inadequate.
>
> 2. The superintendent, who was the only school official with power to suspend in excess of five days and who could order a transfer, was barred from suspending a student until he had determined that all resources in the school and in the community had been exhausted in an effort to avoid suspension. This confirmed that suspensions were an "emergency" remedy, to be used only as a last resort, and only when the student's continued attendance "prevents the orderly operations of the classroom or other school activity" or "presents a clear and present danger of physical injury to other students or school personnel."

The Board concluded with this broad statement: "The constitutional guarantees for students do not stop at the schoolhouse door and must be assiduously protected for all who enter. Likewise, a student, like all others in this society is presumed to be innocent of charges until proven guilty by the evidence produced, surfaced and proven in a fair and impartial hearing, whether administrative or judicial."

15. Matter of Watson. Calvin Watson, Jr. was a black student at Malverne High School on Long Island, a school with a long history of racial discrimination, as a result of which it has been the subject of years of legal proceedings. Calvin was a

senior due to graduate in June, 1970. He had been active during his school career with other black students in a successful campaign to get more black teachers and courses relating to the black experience in America.

He was suspended in March and April, 1970 by an assistant principal, on both occasions for truancy. He was suspended later in April by the same person after a dispute with a teacher about an alleged racial epithet. In the course of the dispute, Calvin pushed the assistant principal who was neither knocked down nor hurt. After the hearing before the Board of Education, Calvin was permanently expelled from the school. We appealed to the Commissioner of Education who reversed the Board's action on the following grounds.

> 1. In the course of the hearing, the Board had considered statements of school officials about Calvin's conduct, even though those officials did not testify at the hearing. On the basis of Matter of Rose, the Commissioner held that this denied him his right to cross-examine his accusers.
>
> 2. The assistant principal lacked the power under state law to suspend a student, such power being granted only to school principals and superintendents.

We raised two other substantial questions which the Commissioner did not pass on. We said that there was no authority under the statute to suspend for truancy. We also claimed that the Board lacked power to permanently expel a student, the statute granting power only to temporarily suspend.

15. Welters et al. v. Robinson. A state court proceeding has been filed seeking mandamus to compel the Board to either throw out suspension appeals which have been pending since last year or to order prompt decisions by the Board and the Chancellor. We seek an order directing the Board to comply with its own by-laws which require decisions on appeals within five school days of their complete filing.

16. Suspension Appeals. A number of administrative appeals to the Chancellor and the Board have been filed which, among them, raise a number of issues involving suspension procedures:

a. The right of a teacher who testifies at a hearing on behalf of a student to be paid for the time missed at schools. Teachers testifying against students are routinely allowed to attend hearings without loss of pay.

b. The right to have suspension hearings held either after school or at the school itself (instead of Board headquarters at 110 Livingston Street) so that student witnesses can testify.

c. The right to be told the subject of pre-hearing communications between a principal and the superintendent who decides, after the hearing, whether or not to suspend. It's in those conversations where the principal usually says whether he'll take the student back in school.

d. The requirement of some standards which will establish what conduct is punishable and what punishment may be imposed. As it is now, each school principal has his own standards of tolerance for student misconduct and they react in ways which bear no resemblance to each other.

e. The right to suspend for "insubordination." Although this is a permissible ground for suspension under state law, the Board of Education requires more than mere disobedience to a principal's order before he can suspend. The student's conduct must also disrupt school activities or pose a clear and present physical danger to students or teachers.

f. The right to have a suspension reviewed daily in order to determine if the condition prompting the suspension still exists. Although principals may suspend up to five days, removal of a student from school is a drastic measure which should terminate when the emergency is over. Principals in fact routinely suspend for an automatic five days, even though most suspensions result from short-lived confrontations. Board policy mandates daily review of suspensions and if this provision is performed, it could drastically reduce the number of school days lost through suspensions.

g. The impartiality of a superintendent presiding over a high school suspension hearing when he was intimately involved in the events at the school leading to the suspension.

SEARCH AND SEIZURE

17. Matter of Jackson. Decision by the Appellate Term, First Department (one judge dissenting) upholding the search of a student for drug implements, even though the search took place off school property and was concededly unlawful under the Fourth Amendment if it had been performed by a police officer on an adult. The search was performed by the coordinator of discipline at a high school. The court's justification for affording a student less protection against searches than that enjoyed by adults was expressed as follows:

> "A school official, standing in loco parentis to the children entrusted to his care, has, inter alia, the long honored obligation to protect them while in his charge, so far as possible, from harmful and dangerous influences..."

In reply, the dissenting judge said:

> "The philosophy of loco parentis is not an invitation to a teacher to arrest a student on suspicion alone three blocks from the school."

We are filing a brief prior to curiae on the appeal arguing that a student does not surrender his rights under the Fourth Amendment merely because he is compelled to go to school. The case seems to be the first in the country upholding a personal search of a student (as opposed to merely his locker) on less than traditional Fourth Amendment standards.

SEX DISCRIMINATION

18. Sanchez v. Baron. An action on behalf of all female students in junior and senior high school enjoins the practice of excluding those students from certain classes on the basis of sex. Among those classes are ceramics, printing, metal-working, electronics

and woodworking. In addition most of the city's vocational high schools are either exclusively for men or exclusively for women. As a result female students have no opportunity to take a variety of courses taught exclusively at the all-male schools. In addition, female students have substantially more limited access to physical education facilities in many schools. Although the action on behalf of the class is still pending, Bonnie Sanchez was permitted to enroll in a metal-working school course at her school and won the year-end prize as the best student in the course. The action is still pending.

19. Matter of Graber. Complaint filed with New York City Commission on Human Rights in behalf of female tennis player who was prohibited from playing interscholastic competitive tennis on the sole ground she was female, despite uncontested statement from the school tennis coach that she was better than several male members of the team. Complaint was settled when the Board of Education agreed to permit her to play and changed the rules to permit co-educational participation in non-contact interscholastic sports.

MISCELLANEOUS

Diplomas and Graduation Exercises

19. Matter of Leroy Carroll. A black Bronx high school student leader was denied his diploma because of "failures in citizenship." Several incidents were cited, the most notable of which resulted from an argument with women deans and faculty members where he allegedly called them "white devils" and "cows." Citizenship has been a requirement for a diploma in New York City and has been used as a threat to keep politically active students in line.

Several students complained last June that diplomas had been withheld, but in each instance, the threat of legal action resulted in the issuance of the diploma. Here the principal resisted and we appealed to the Chancellor.

We argued that vague, undefined standards of "citizenship" gave the school unfettered discretion to withhold diplomas from students who otherwise qualified for them. We also argued that diplomas were intended to signify academic achievement and not good behavior. The Chancellor agreed and threw the requirement out, observing:

"The case before me raises the fundamental question related to the award of diplomas throughout the citywide school district, namely whether a school may properly deny or delay the award of an earned diploma as a means of disciplining a student for violation of rules of conduct. . . . It is clear that the school is and should be seriously concerned with both scholarship and citizenship. It is inconceivable, however, that the school's evident goal of seeking to develop in its students positive traits of democratic citizenship should interfere with or inhibit the school's stated "primary purpose"--assisting each and every student to receive a diploma.

"Students who violate rules of conduct are subject to disciplinary measures, but the manipulation of a diploma is not a proper or legitimate disciplinary tool in view of the inherent difficulty in defining "citizenship" and the clear danger and impropriety of labelling students as "good" or "bad" citizens.

". . . The school system should award the diploma on the basis of carefully defined educational criteria, and not deny or delay the diploma on other than educational grounds or as a means of discipline. It is not the prerogative of the school system to manipulate the award of a diploma when the facts clearly indicate that the diploma--an award for academic achievement--has in fact been earned. In brief, the school is empowered to grant diplomas, not citizenship.

"It is therefore directed that the student's diploma be issued.

"It is further directed that the High School Office take appropriate steps to ensure that henceforth diplomas are awarded throughout the citywide school district in accordance with educational criteria, and that diplomas are not denied, withheld or delayed on other than educational grounds or as a means of discipline.

20. Matter of Sandra Wilson. This case has been appealed and argued before the Commissioner of Education. Petitioner seeks a decision declaring invalid the procedures which barred her from graduation exercises and denied her a diploma because of "consistent lack of good citizenship." The appeal also argues the right of parents to inspect their children's school records (which are labeled "confidential").

GYM CASES

21. John Marripodi. A champion wrestler at Seaford High School on Long Island was denied all his athletic honors--including his varsity letter, and his place on the school's "Wall of Fame" --in spite of the fact that he had wrestled the entire season and won his divisonal championship. The reason was that he had been arrested on a marijuana possession charge the previous September and given "youthful offender" treatment. School officials had known about the arrest throughout the year.

After legal action had been commenced to reclaim the student's honors, the Seaford School Board rescinded its earlier action against the student and decided to return his honors.

22. Matter of Wheatman. Larry Wheatman was a senior at George Washington High School in 1969-70 and was one of the students actively involved in the attempt to establish a grievance table at the school. He was due to graduate in June, 1970. Early in that month he spoke to his physical education teacher who threatened to fail him and thus prevent his graduation. Although having met all the academic requirements for graduation, Larry was denied a diploma. The principal explained that he had failed gym because of an excessive number of absences. Larry had never

7/72 Addendum to #20--Matter of Sandra Wilson.

In Matter of Wilson (Commissioner of Education Decision #8421, Feb. 22, 1972) a junior high school student was barred from graduation ceremonies because her "records show a consistent lack of good citizenship during the past three years." When the student's parents asked to examine their child's school records, they were allowed to see only the "official school record" consisting of the "cumulative record card, including test data card." They were denied access to the unofficial record consisting of "teacher notes, guidance notes, record books and other data..." on the basis that they were confidential.

The Commissioner's ruling made two important points:

1) The term "pupil records" includes "those records maintained by the school for each pupil for the use of professional members of the school staff." Therefore, all records, both official and unofficial, must be made available to parents. Parents have a right to demand that irrelevant and inaccurate entries be expunged.

2) "It is educationally unsound for a school system to brand an individual with the label of 'poor citizen'. The placing of such a label upon a student is not the proper function of a school system." Therefore, a student cannot be denied the right to attend graduation ceremonies or receive a diploma because of lack of good citizenship.

been warned of excessive absences in gym or had been told that a given number would result in failure. In addition, he claimed that a substantial number of his absences were excused. We had several discussions with the school officials requesting a hearing on these matters. A letter to the Superintendent of High Schools and Chancellor went unanswered. A lawsuit was filed in which we claimed that physical education requirements were no reasonable relationship to the requirements of a diploma, especially in view of the haphazard and pointless activities which made up most gym classes. We also claimed a right to a hearing before a diploma could be withheld for non-academic reasons and the denial of due process in the arbitrary fixing of a number of absences which would result in failure. Shortly after the suit was filed, Larry was granted a diploma.

23. Matter of Rose M. The student, in training as a professional classical dancer, refused to perform physical exercises in gym classes that she considered dangerous to her development as a dancer, and as a result was failed in five out of eight terms of physical education. When all her academic requirements at Christopher Columbus High School were completed, she was told she would not receive a diploma because of the failures. An appeal to the Chancellor overruled the principal's and the assistant superintendent's decision and obtained the student's diploma. The decision stated that the school should have recognized her request to be excused from physcial education.

Several other students complained that they were not allowed to graduate simply because of absences from gym. Negotiations resulted in diplomas being issued. The Chancellor is now formulating a new policy with regard to gym and graduation.

MANDATORY FAILURE

24. Vincent S., a student in a Brooklyn high school, passed all but one course in the spring semester. He took the course in summer school and passed with a high grade. Upon his return in the fall, he was told that he was being failed on all of his courses from the previous semester because of excessive absences.

The school invoked a rule similar to those in other schools which mandate failure in a course where the student is absent more

than a certain number of times. The rule is invoked even though the student may have passed all tests and papers.

Since grades are generally taken to be indications of academic achievement and not attendance (we suggest that a student's attendance be noted elsewhere on his report card), we have appealed the failing grades to the superintendent.

25. Scherer v. Board of Education of Union Free School District No.3

P ce, a junior in high school, was discharged from a citizenship course pursuant to a school rule making such discharge as well as failure in the course automatic for two cuts. Despite an attempt to obtain a hearing regarding the reason for the cuts, no hearing was held and the discharge was upheld by the principal and superintendent. We filed an immediate appeal with the Commissioner of Education claiming that the discharge was in effect a suspension and thus did not comply with the statutory procedural requirements for suspensions. The next day, and before the Commissioner could act on our appeal, Bruce was reinstated to the class.

DISCHARGES

26. John S. and Derek F. These two bl[illegible] students were representative of a widespread practice in the school system of forcing older students out of the schools when the schools tired of them. Taking advantage of the confusion of many parents over the fact that students could, if they wished, drop out of school when they were 17, even though they had a right, under state law, to go until they were 21, many principals persuaded parents that their children had to leave day school and go to night school. Parents frequently received form letters similar to this one sent to the parents of John S.:

> "_____ will be discharged from this school on 9/30/70 because of cutting, excessive absences. (He) _____ is over the age of compulsory school attendance (17 years).
>
> "Please have your child return all books belonging to the school so that the school record may be cleared."

Neither John nor his parents had been contacted about his absences or warned that he would be discharged.

A variant was the one sent to the parents of Derek H.:

> "I discussed Derek's future with him this morning and, unfortunately, after checking with all his teachers and his grade-advisor and considering the fact that he is going on his 20th birthday, we are forced to discharge him from school.
>
> "I tried to contact you by telephone this morning to discuss this matter with you but there was no answer."

After we met with school officials, both students were reinstated. Nevertheless complaints continued. The threat of a lawsuit to put an end to such discharges has apparently put an end to the practice.

SECURITY GUARDS

27. Matter of Pitner. This is a damage action against the Board of Education. Mrs. Pitner, who was waiting for her daughter in the lobby of a Manhattan high school, was ordered by a security guard to wait outside. She explained that it was raining, an argument ensued, and she was handcuffed and arrested. This was the third complaint received at that school about security guards and one of many received from schools around the city.

EXCLUSION OF COMMUNITY WORKERS

28. People v. Keith. An OEO-funded poverty worker who accompanied a parent to Long Island City High School was arrested for loitering after the principal ordered her to leave and she refused. Because the arrest interfered with duties performed under a federal statute, we removed the case to federal court, where it has remained for several months. Ultimately, the case will test the extent to which a principal can be the sole arbiter of who is lawfully on school property.